



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 946**

**[Doc. No. AMS-FV-14-0026; FV14-946-1 IR]**

**Irish Potatoes Grown in Washington; Modification of the Handling Regulations for Yellow Fleshed and White Types of Potatoes**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** This rule extends the temporary exemption of yellow fleshed and white skin (white types) potatoes from minimum quality, maturity, pack, marking, and inspection requirements under the Washington potato marketing order through the 2014-2015 and subsequent fiscal periods.

Without this action, the temporary exemption currently in effect would end on June 30, 2014. The marketing order regulates the handling of Irish potatoes grown in Washington and is administered locally by the State of Washington Potato Committee (Committee). This rule is expected to reduce overall industry expenses and increase net returns to producers and handlers while continuing to give the industry the opportunity to explore alternative marketing strategies.

**DATES:** Effective July 1, 2014; comments received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Teresa Hutchinson, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and

Agreement Division, Fruit and Vegetable Program, AMS, USDA;  
Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail:  
Teresa.Hutchinson@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying  
with this regulation by contacting Jeffrey Smutny,  
Marketing Order and Agreement Division, Fruit and Vegetable  
Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237,  
Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax:  
(202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under  
Marketing Order No. 946, as amended (7 CFR part 946),  
regulating the handling of Irish potatoes grown in  
Washington, hereinafter referred to as the "order." The  
order is effective under the Agricultural Marketing  
Agreement Act of 1937, as amended (7 U.S.C. 601-674),  
hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this  
rule in conformance with Executive Orders 12866, 13563, and  
13175.

This rule has been reviewed under Executive Order  
12988, Civil Justice Reform. This rule is not intended to  
have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of entry of the ruling.

This rule extends the temporary exemption of yellow fleshed and white types of potatoes from the order's handling regulations through the 2014-2015 and subsequent fiscal periods. Without this action, the temporary exemption currently in effect would end on June 30, 2014. This rule allows the Washington potato industry to continue to market yellow fleshed and white types of potatoes without regard to the minimum quality, maturity, pack,

marking, and inspection requirements prescribed under the order.

The order authorizes the establishment of handling regulations for all varieties or varietal types of potatoes grown in the production area. These regulations can include minimum grade, size, quality, or maturity requirements. They can also stipulate the size, capacity, weight, dimensions, pack, marking, or labeling of containers used in the handling of such potatoes. The handling regulations may be modified, suspended, or terminated upon the recommendation of the Committee and the approval of the Secretary. When handling regulations are in effect, regulated potatoes must be inspected and certified by the Federal-State Inspection Service (FSIS).

The above-described authorities are found in §§ 946.51, 946.52, and 946.60 of the order. Supporting rules and regulations for these authorities are found in § 946.336.

The Committee meets regularly to consider the effectiveness of regulatory requirements in place for Washington potatoes. These requirements are issued on a continuing basis and may be modified, suspended, or terminated upon recommendation of the Committee and approval by USDA. Committee meetings are open to the

public, and interested persons may express their views at these meetings. USDA reviews recommendations made by the Committee, along with any additional information submitted by the Committee and other available information, and determines whether such recommendations would tend to effectuate the declared policy of the Act.

The Committee met on July 16, 2013, and unanimously recommended exempting yellow fleshed and white types of potatoes from the handling regulations through June 30, 2014. This recommendation was implemented by USDA in an interim rule published in the **Federal Register** on October 23, 2013 [78 FR 62967], and finalized on May 2, 2014 [79 FR 24997].

During the temporary exemption, yellow fleshed and white types of potatoes were able to be handled without regard for the order's handling and inspection requirements. The Committee initiated this action to evaluate the potential cost savings, and the corresponding impact on the market, that might result from such an exemption.

Since October 24, 2013, initiation of the exemption period, handlers have called upon FSIS only intermittently to inspect and certify yellow fleshed and white types of

potatoes prior to shipment in order to meet their customers' needs or market requirements. With full-time inspection no longer mandatory, handlers were able to coordinate the timing and utilization of inspection services to meet the needs of their individual operations, resulting in reduced costs. No negative market impacts were experienced as a result of the temporary exemption of yellow fleshed and white types of potatoes from the handling regulations. Handlers have continued to meet their customers' specifications, either with voluntary inspection or no inspection, during the temporary exemption. Therefore, the Committee believes that the temporary exemption of yellow fleshed and white types of potatoes has reduced industry costs without negatively impacting the market.

At its December 10, 2013, meeting, the Committee unanimously recommended indefinitely extending the temporary exemption for yellow fleshed and white types of potatoes from the handling regulations past the previously established end date of June 30, 2014. Therefore, this rule modifies § 946.336 to exempt yellow fleshed and white types of potatoes from handling regulations through the 2014-2015 and subsequent fiscal periods.

As a result of this exemption, yellow fleshed and white types of potatoes will not be subject to the minimum grade, size, quality, maturity, pack, marking, and inspection requirements of the order for the 2014-2015 fiscal period and subsequent fiscal periods. However, assessments on all fresh yellow fleshed and white types of potatoes handled under the order will remain in effect during the exemption period. Also during this interval, handlers will continue to be required to submit reports of their shipments of fresh yellow fleshed and white types of potatoes to the Committee for the purposes of collecting assessments and compiling industry statistics.

Although this rule continues to provide handlers of yellow fleshed and white types of potatoes the opportunity to decrease their total costs by eliminating the expenses associated with mandatory inspection, it does not restrict handlers from seeking inspection on a voluntary basis. In addition, the Committee will continue to monitor and evaluate the effects of the exemption on marketing and producer returns at future Committee meetings.

#### **Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural



Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 43 handlers of Washington potatoes subject to regulation under the order and approximately 267 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. (13 CFR 121.201)

For the 2011-2012 marketing year, the Committee reports that 11,018,670 hundredweight of Washington potatoes were shipped into the fresh market. Based on average f.o.b. prices estimated by the USDA's Economic Research Service and Committee data on individual handler

shipments, the Committee estimates that 42, or approximately 98 percent of the handlers, had annual receipts of less than \$7,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Washington potatoes for 2011-2012 was \$7.90 per hundredweight. The average gross annual revenue for the 267 Washington potato producers is therefore calculated to be approximately \$326,021. In view of the foregoing, the majority of Washington potato handlers and producers may be classified as small entities.

This rule extends the temporary exemption of yellow fleshed and white types of potatoes from the handling regulations through the 2014-2015 and subsequent fiscal periods. The industry is concerned that the cost of mandatory inspection, which has increased, outweighs the benefits of having quality regulations in place. The extension of the temporary exemption is expected to further reduce overall industry expenses and continue to provide the industry with the opportunity to explore alternative marketing strategies.

The authority for regulation is provided in § 946.52 of the order. In addition, the handling regulations are

specified under § 946.336 of the order's administrative rules and regulations.

The Committee does not anticipate that this rule will negatively impact small businesses. This rule will exempt yellow fleshed and white types of potatoes from minimum quality, maturity, pack, marking, and inspection requirements. Though inspections are not mandatory for such potatoes during the exemption period, handlers may voluntarily choose to have their potatoes inspected. Handlers are thus able to control costs based on the demands of their customers.

The Committee discussed alternatives to this recommendation, including taking no action and allowing the temporary exemption to lapse on June 30, 2014. However, the Committee believes that the temporary exemption for yellow fleshed and white types of potatoes has been successful, and recommended extending the exemption of yellow fleshed and white types of potatoes from the handling regulation indefinitely.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178,

## Generic Vegetable and Specialty Crops.

During the exemption period, handlers will continue to be required to report fresh shipments of yellow fleshed and white types of potatoes monthly. While this rule requires a reporting requirement for shipments of yellow fleshed and white types of potatoes, their exemption from handling regulations also eliminates the more frequent reporting requirements imposed under the order's special purpose shipment exemptions (§ 946.336(d) and (e)). Under these paragraphs, handlers are required to provide detailed reports whenever they divert regulated potatoes for livestock feed, charity, seed, prepeeling, processing, grading and storing in specified counties in Oregon, and experimentation.

Therefore, any additional reporting or recordkeeping requirements on either small or large handlers of yellow fleshed and white types of potatoes are expected to be offset by the elimination of the other reporting requirements currently in effect. In addition, the exemption from handling regulations and inspection requirements for yellow fleshed and white types of potatoes is expected to reduce industry expenses.

AMS is committed to complying with the E-government

Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The Committee's meetings were widely publicized throughout the Washington potato industry, and all interested persons were invited to participate in Committee deliberations. Like all Committee meetings, the December 10, 2013, meeting was a public meeting. All entities, both large and small, were able to express views on this issue. Further, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:  
<http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>.  
Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This interim rule invites comments on the exemption of yellow fleshed and white types of potatoes from the handling regulations for the 2014-2015 and subsequent fiscal periods. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Any changes resulting from this rule should be effective July 1, 2014, because the temporary exemption for Washington yellow fleshed and white types of potatoes from the handling regulations ends on June 30, 2014; (2) the Committee discussed and unanimously recommended these changes at a public meeting, and all interested parties had an opportunity to provide input; (3)

potato handlers are aware of this action and want to take advantage of this handling regulation relaxation; and (4) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 946**

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is amended as follows:

**PART 946 - IRISH POTATOES GROWN IN WASHINGTON**

1. The authority citation for 7 CFR part 946 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

2. The introductory text of § 946.336 is revised to read as follows:

**§ 946.336 Handling regulation.**

No person shall handle any lot of potatoes unless such potatoes meet the requirements of paragraphs (a), (b), (c), and (g) of this section or unless such potatoes are handled in accordance with paragraphs (d) and (e), or (f) of this section, except that shipments of the blue or purple flesh varieties of potatoes shall be exempt from both this

handling regulation and the assessment requirements  
specified in § 946.41: Provided, That yellow fleshed,  
white, red, and russet type potatoes shall be exempt from  
the requirements of paragraphs (a), (b), (c), (e), and (g)  
of this section.

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Dated: May 1, 2014.

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Rex A. Barnes,  
Associate Administrator,  
Agricultural Marketing Service.

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